

Award No. 3664

Docket No. 3299

2-PRR-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. — C. I. O. (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1)—That the overhauling and maintenance of over-the-road buses and trucks, comes within the scope of the current Agreement as Machinists' work.

(2)—That the Pennsylvania Railroad Company, on July 14, 1956, and subsequent dates, violated the Agreement, when they placed certain trucks and buses in private garages for service and repairs, thereby damaging the employes of the Machinist Craft.

(3)—That accordingly the Pennsylvania Railroad Company be ordered to:

(a)—Restore the Grade "C" Machinist position at Dennison, Ohio Enginehouse (which was abolished on account of this action by the Carrier).

(b)—Desist from unilaterally transferring the repair and maintenance work on said trucks and buses to outside local garages.

(c)—Compensate Machinist B. B. DeMuth, for five (5) days' pay each month, from July 14, 1956, and continuing until final settlement of this claim.

EMPLOYEES' STATEMENT OF FACTS: Machinist B. B. DeMuth, hereinafter referred to as the claimant, is regularly employed, bulletined and assigned as a machinist (C-Grade), in the carrier's Dennison, Ohio shops, with first shift assigned hours of 7:00 A. M. to 3:30 P. M., Monday through Friday, with Saturday and Sunday rest days. The claimant has a machinist seniority date of October 19, 1922. The claimant obtained his advertised position in August, 1955, by exercising seniority over L. O. Dodson, who had been on

See also Third Division Awards 6673, 6207 and 6096, wherein the same principle has been enunciated.

III. Under the Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreement, which constitutes the applicable agreement between this carrier and the Railway Employees' Department, A. F. of L., and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreement concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the organization in this case would require the Board to disregard the agreement between the parties, hereinbefore referred to, and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the applicable agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has conclusively shown that there has been no violation of the applicable agreement in the instant case and that the employees' claim is without merit.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the organization in this matter.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This claim involves the same claimant and like service, agreement and contentions as decided in Award No. 3663 and should be controlled thereby.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of February, 1961.

LABOR MEMBERS DISSENT TO AWARDS NOS. 3663, 3664 and 3665

The evidence of record in this dispute shows that the automotive equipment involved in this dispute had been serviced and repaired in the shop at Dennison, Ohio, and the majority so state in the findings — then they proceed to erroneously construe the intent and meaning of Rule 5-F-1 and the Graded Work Classification of the current agreement. Therefor Awards Nos. 3663, 3664 and 3665 are in error.

/s/ Edward W. Wiesner

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ James B. Zink